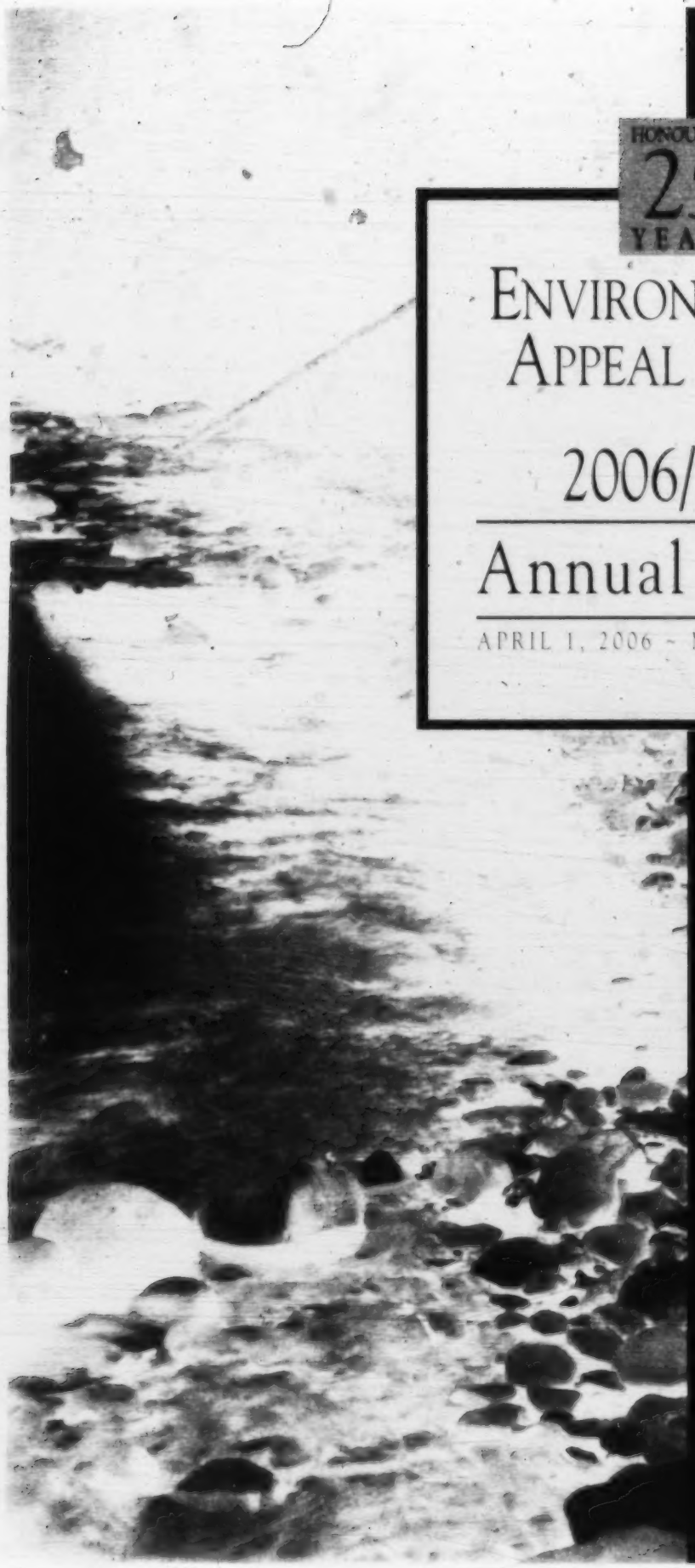

HONOURING 25 YEARS

ENVIRONMENTAL APPEAL BOARD

2006/2007 Annual Report

APRIL 1, 2006 ~ MARCH 31, 2007

BRITISH COLUMBIA
The Best Place on Earth

Environmental Appeal Board

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Victoria, British Columbia
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Honourable Barry Penner
Minister of Environment
Minister Responsible for Water Stewardship & Sustainable Communities
Parliament Buildings
Victoria, British Columbia
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Honourable George Abbott
Minister of Health
Parliament Buildings
Victoria, British Columbia
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Dear Ministers:

I respectfully submit herewith the Annual Report of the Environmental Appeal Board for the period April 1, 2006 through March 31, 2007.

Yours truly,

Alan Andison
Chair
Environmental Appeal Board

Eco Audit

This 2006/2007 Environmental Appeal Board Annual Report (inside) is printed on stock that is made with 100% post consumer recycled fiber.

By using recycled paper for this report we saved...

- 465 pounds of wood (two trees which would supply enough oxygen for one person for one year)
- 588 gallons of water (34 eight-minute showers)
- 1 million BTUs of energy (enough to power an average household for four days)
- 142 pounds of emissions (carbon sequestered by two tree seedlings grown for ten years)
- 75 pounds of solid waste (three 32-gallon garbage cans)

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Message from the Chair

I am pleased to submit the sixteenth Annual Report of the Environmental Appeal Board.

The year 2007 marks the 25th anniversary of the Environmental Appeal Board. The legislation establishing the Board came into force on January 1, 1982. At that time, the Board heard appeals under four enactments: the *Pesticide Control Act*, the *Waste Management Act*, the *Water Act*, and the *Wildlife Act*.

Although the Environmental Appeal Board itself was new, its business was not. The Board was created in order to take the place of a number of different agencies that had previously heard appeals under those four statutes. Specifically, pesticide appeals were heard by the Pesticide Control Appeal Board (established in 1978), appeals of waste-related decisions were heard by the Pollution Control Board (established in 1956), appeals of decisions under the *Wildlife Act* had been heard by the County Court, and Cabinet heard appeals of *Water Act* decisions. Thus, the creation of this Board provided the public with access to one expert body that could hear appeals from a number of government decisions and provided a more effective and efficient process to appeal environment-related matters.

Since 1982, the Board's jurisdiction has expanded to cover additional matters, such as decisions made in relation to contaminated sites and on-site sewage disposal systems, the latter being regulated under the *Health Act*. It also has jurisdiction over appeals from decisions of the Oil and Gas Commission made under the *Water Act* and the *Environmental Management Act*, and from certain decisions of district directors and officers appointed by the Greater Vancouver Regional District under Part 3 of the *Environmental Management Act*.

For a number of years, the Board also had jurisdiction over appeals from certain matters under the *Commercial River Rafting and Safety Act*. Changes in government policy led to the removal of appeals from this enactment, and the move to a performance-based regulation of on-site sewage disposal reduced the number of appealable decisions under the *Health Act*.

Since its inception, there have been numerous members appointed to the Board under the administration of six chairs, including myself. The Board chairs over the past 25 years have been Frank Hillier, Paul Jarman, Linda Michaluk, Judith Lee, David Perry, Toby Vigod and then myself. For 15 years, the chair of the Board was a part-time member like all of the other members. This changed in 1997 when the government appointed one full-time chair to administer both the Board and the Forest Appeals Commission.

The Board has a lengthy history of providing the public with an avenue to appeal

certain environmental matters that are of concern to them. While some of those concerns have changed very little over the past 25 years, the complexity of the appeals has changed dramatically. Whether it is because of the significant financial interests at stake, as is evident in appeals regarding contaminated sites, or the significant community interests at issue, as evident in cases involving aboriginal rights and title, the Board has been facing increasingly longer and more complicated hearings with numerous experts and lengthy legal argument. As this trend is likely to continue, the Board will continue to add new members with the necessary experience and expertise to hear these matters, and will be pursing other avenues to ensure that the appeal process will be understandable, accessible and timely for all parties.

Alan Andison

Introduction

The Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. The information contained in this report covers the period of time between April 1, 2006 and March 31, 2007.

The report provides an overview of the structure and function of the Board and how the appeal process operates. It contains statistics on appeals filed, hearings held and decisions issued by the Board within the report period. It also contains the Board's recommendations for legislative changes to the statutes and regulations under which the Board has jurisdiction to hear appeals. Finally, a selection of summaries of the decisions issued by the Board during the report period are provided and sections of the relevant statutes and regulations are reproduced.

Decisions of the Environmental Appeal Board are available for viewing at the Board office, on the Board's website, and at the following libraries:

- Ministry of Environment Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Library

Decisions are also available through the QuickLaw Database.

Detailed information on the Board's policies and procedures can be found in the Environmental Appeal Board Procedure Manual, which may be obtained from the Board office or viewed on the Board's website. If you have any questions or would like additional copies of this report, please contact the Board office. The Board can be reached at:

Environmental Appeal Board
Fourth Floor, 747 Fort Street
Victoria, British Columbia
V8W 3E9
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

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www.eab.gov.bc.ca

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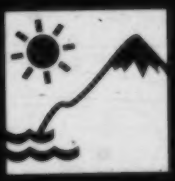


The Board

The Environmental Appeal Board is an independent, quasi-judicial tribunal established on January 1, 1982 under the *Environment Management Act*, and continued under section 93 of the *Environmental Management Act*. Being an adjudicative body, the Board operates at arms-length from the government to maintain the necessary degree of independence and impartiality. This is important because it hears appeals from administrative decisions made by government officials under a number of statutes. The statutes in force during the report period were the *Environmental Management Act*, the *Integrated Pest Management Act*, the *Wildlife Act* and the *Water Act*, all of which are administered by the Ministry of Environment, and the *Health Act* which is administered by the Ministry of Health.

The Board makes decisions regarding the legal rights and responsibilities of the parties that appear before it and decides whether the decision under appeal was made in accordance with the law. Like a court, the Board must decide its appeals by weighing the evidence before it, making findings of fact, interpreting the legislation and common law and applying the law and legislation to the facts.

In carrying out its functions, the Board has the powers granted to it under the above-mentioned statutes, as well as additional powers provided by the Inquiry Act, such as the ability to compel persons or evidence to be brought before the Board. The Board also ensures that its processes comply with the common law principles of natural justice.

Appointments to the Board and the administration of the Board are governed by the *Administrative Tribunals Appointment and Administration Act*.

Board Membership

Board members are appointed by the Lieutenant Governor in Council (Cabinet) under section 93(3) of the *Environmental Management Act* (formerly section 11(3) of the *Environment Management Act*). The members appointed to the Board are highly qualified individuals, including professional biologists, professional foresters, professional engineers and lawyers with expertise in the areas of natural resources and administrative law. These members apply their respective technical expertise and adjudication skills to hear and decide appeals in a fair, impartial and efficient manner.

The members are drawn from across the Province. Board membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members. The length of the initial appointments and any reappointments of Board members, including the chair, are set out in the *Administrative Tribunals Appointment and Administration Act*, as are other matters relating to the appointees. This Act also sets out the responsibilities of the chair.

During the present report period, the membership of the Board did not change. The Board members as of March 31, 2007 were as follows:

The Board	Profession	From
Chair		
Alan Andison	Lawyer	Victoria
Vice-chair		
Cindy Derkaz	Lawyer (Retired)	Salmon Arm
Members		
Sean Brophy	Professional Engineer	North Vancouver
Robert Cameron	Professional Engineer	North Vancouver
Richard Cannings	Biologist	Naramata
Don Cummings	Professional Engineer	Penticton
Bruce Devitt	Professional Forester (Retired)	Victoria
Margaret Eriksson	Lawyer	New Westminster
Bob Gerath	Engineering Geologist	North Vancouver
R.A. (Al) Gorley	Professional Forester	Victoria
James Hackett	Professional Forester	Nanaimo
Lynne Huestis	Lawyer	North Vancouver
Katherine Lewis	Professional Forester	Prince George
Paul Love	Lawyer	Campbell River
David Ormerod	Professional Forester	Victoria
Gary Robinson	Resource Economist	Victoria
David Searle	Lawyer (Retired)	North Saanich
Lorraine Shore	Lawyer	Vancouver
David J. Thomas	Oceanographer	Victoria
Robert Wickett	Lawyer	Vancouver
Stephen V.H. Willett	Professional Forester (Retired)	Kamloops
Phillip Wong	Professional Engineer	Vancouver
J.A. (Alex) Wood	Professional Engineer	North Vancouver

The Board Office

The Board office provides registry services, legal advice, research support, systems support, financial and administrative services, training and communications support for the Board.

The Board shares its staff and its office space with the Forest Appeals Commission, the Community Care and Assisted Living Appeal Board and the Hospital Appeal Board. Further, as of April 22, 2006, the office took over responsibility for an additional tribunal, the Industry Training Appeal Board.

Each of these tribunals operates completely independently of one another. Supporting five tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, reducing administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Board by one party must also be provided to all other parties to the appeal.

The Board is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If a member of the public requests information regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Board is subject to public scrutiny and review.

In addition, the names of the parties in an appeal appear in the Board's published decisions which are posted on the Board's website, and may appear in this Annual Report.

Legislative Amendments Affecting the Board

In this report period, the Board was not affected by any amendments to the statutes and regulations under which the Board has jurisdiction to hear appeals.

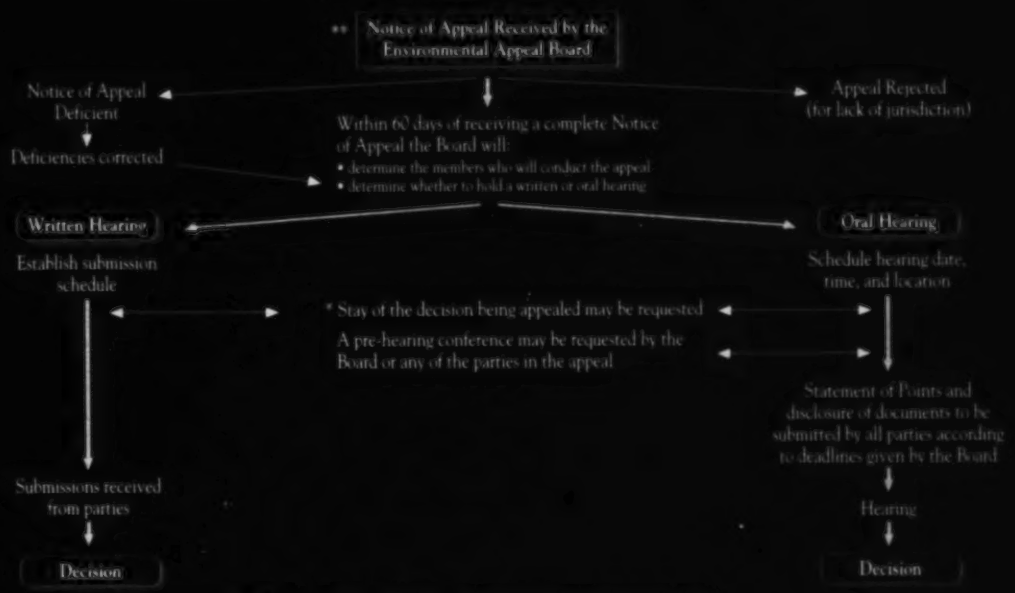
The Appeal Process

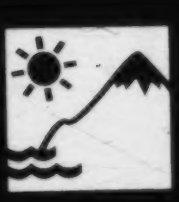
Part 8 of the *Environmental Management Act* sets out the basic powers and procedures of the Board. Additional detail is provided in the *Environmental Appeal Board Procedure Regulation*.

The Board's authority over a specific appeal is further defined in the individual statutes and regulations which provide the right of appeal to the Board. The individual statutes set out the types of decisions that are appealable to the Board, the time for appealing the decisions, as well as the Board's decision-making powers on the appeal.

In order to ensure that the appeal process is open and understandable to the public, the Board has developed the Environmental Appeal Board Procedure Manual. The manual contains information about the Board itself, the legislated procedures that the Board is required to follow, and the policies the Board has adopted to fill in the procedural gaps left by the legislation.

The following is a brief summary of the appeal process. For more detailed information, a copy of the Board's Procedure Manual can be obtained from the Environmental Appeal Board office or from the Board's website.


** Notice of Appeal Received by the Environmental Appeal Board
Notice of Appeal Deficient
Deficiencies corrected
Appeal Rejected (for lack of jurisdiction)
Within 60 days of receiving a complete Notice of Appeal the Board will:
• determine the members who will conduct the appeal
• determine whether to hold a written or oral hearing
Written Hearing
Oral Hearing
Establish submission schedule
Schedule hearing date, time, and location
* Stay of the decision being appealed may be requested
A pre-hearing conference may be requested by the Board or any of the parties in the appeal
Statement of Points and disclosure of documents to be submitted by all parties according to deadlines given by the Board
Submissions received from parties
Hearing
Decision
Decision
** The Notice of Appeal must be received within 30 days of the time that the decision under appeal was made.
* The Board's authority to issue a stay varies from one statute to the next.



Recommendations

There were no issues that arose in 2006/2007 to warrant a recommendation at this time.

Statistics

The following tables provide information on the appeals filed with the Board and decisions published by the Board during the report period. The Board publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Board also issues numerous unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

Between April 1, 2006 and March 31, 2007, a total of 43 appeals were filed with the Board against 42 administrative decisions, and a total of 17 decisions were published.

April 1, 2006 – March 31, 2007

Total appeals filed		43
Number of administrative decisions appealed		42
Appeals abandoned, withdrawn, rejected, jurisdiction/standing		16
Hearings held on the merits of appeals		
Oral hearings completed	16	
Written hearings completed	0	
*Total hearings held on the merits of appeals		16
Total oral hearing days		50
Published Decisions issued		
Final Decisions		
Appeals allowed	1	
Appeals allowed, allowed in part	3	
Appeals dismissed	7	
Total Final Decisions		11
Decisions on preliminary matters		6
Other Decisions		0
Decisions on Costs		0
Total published decisions issued		17

*Note: Most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic. This table provides an overview of the total appeals filed, hearings held, and published decisions issued by the Board during the report period.

▲

It should be noted that the number of decisions issued and hearings held during the report period does not necessarily reflect the number of appeals filed for the same period, because the appeals filed in previous years may have been heard or decided during the report period.

It should also be noted that two or more appeals may be heard together.

Appeal Statistics by Act

	Environmental Management	Health	Integrated Pest Management	Pesticide Control	Waste Management	Water	Wildlife
Appeals filed during report period	17					10	16
Number of administrative decisions appealed	16					10	16
Appeals abandoned, withdrawn, rejected jurisdiction/standing	5			1		5	5
Hearings held on the merits of appeals							
Oral hearings	3				1	1	11
Written hearings							
Total hearings held on the merits of appeals	3				1	1	11
Total oral hearing days	25				5	3	17
Published decisions issued							
Final decisions	1						9
Cost Award							
Preliminary applications	1				2	3	1
Reconsideration							
Consent							1
Total published decisions issued	2				2	3	10

▲
This table provides a summary of the appeals filed, hearings held and published decisions issued by the Board during the report period, categorised according to the statute under which the appeal was brought.

Summaries of Environmental Appeal Board Decisions

April 1, 2006 ~ March 31, 2007

Appeals are not heard by the entire Board; the appeals are heard by a "panel" of the Board. The Chair of the Board will decide whether an appeal should be heard and decided by a panel of one or by a panel of three members of the Board. The size and composition of the panel generally depends upon the type(s) of expertise needed by the Board members in order to understand the issues.

Under all of the statutes in which the Board is empowered to hear appeals, the Board has the power to confirm, vary or rescind the decision under appeal. In addition, under all of the statutes except the *Health Act*, the Board may also send the matter back to the original decision-maker with or without directions. When an appellant is successful in convincing the panel, on a balance of probabilities, that the decision under appeal was made in error, or that there is new information that results in a change to the original decision, the appeal is said to be "allowed". If the appellant succeeds in obtaining some changes to the decision, but not all of the changes that he or she asked for, the appeal is said to be "allowed in part". When an appellant fails to establish that the decision was incorrect on the facts or in law, and the Board upholds the original decision, the appeal is said to be "dismissed".

It is important to note that the Board encourages parties to resolve the subject of the appeal either on their own or with the assistance of the Board. Many appeals are resolved without the need for a hearing. Sometimes the parties will reach an agreement amongst themselves and the appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a "Consent Order" and ask the Board to approve the order. The Consent Order then becomes an order of the Board. The Board has included an example of an appeal that was resolved by Consent Order in the summaries below.

It is also important to note that the Board issues hundreds of decisions each year, some of which are published and others that are not. Therefore, not all of the decisions made by the Board between April 1, 2006 and March 31, 2007 have been included in this Annual Report. Rather, we have selected a few of the Board's decisions to be summarized in this report that reflect the variety of subjects and the variety issues that come before the Board in any given year. As has been noted in the Message from the Chair, the subject matter and the issues can vary significantly in both technical and legal complexity. The summaries have been organized according to the statute under which the appeal was filed and are listed in order of their decision number as opposed to the date the decision was released.

For a full viewing of all decisions and summaries issued during this report period please refer to the Board's web page.

Environmental Management Act

Storage of "Hazardous Waste" in Abbotsford

2006-EMA-004(a) Ed Ilnicki v. Director, Environmental Management Act (Henry Rempel and Lexington Properties Ltd., Third Parties)
Decision Date: November 21, 2006
Panel: Don Cummings

Ed Ilnicki operated a business under the name of Valley Demolition Design and Repair from his residence in Abbotsford. The purposes of the business were to "demolish, repair, design & rebuild buildings, machinery & equipment." Mr. Ilnicki stored the materials that he used for his business in a warehouse located on Wheel Avenue in Abbotsford. The materials stored in the warehouse included substances such as oil (oily rags, grease), printing ink, flammable liquids (xylene), paint related material and oil filters.

During an inspection by the Ministry of Environment, a Toxic Management/Emergency Response Officer (the "Officer") observed many containers with varying quantities of waste, many of which were not labelled, and some containers showing signs of wear and decay (i.e., barrels were rusted and evidence of wastes seeping from the containers was found). The Officer was concerned that some of the wastes met the criteria for "hazardous waste" as defined in the *Hazardous Waste Regulation* (the "*Regulation*"), and that the wastes presented a potential hazard to both human health and the environment should a spill, fire or some other incident occur on the site. The Officer advised Mr. Ilnicki to retain a licensed hazardous waste transporter to immediately remove the hazardous wastes in excess of what was permitted under the *Regulation* and to provide a report of his actions to the Ministry by a specified date.

When it was apparent that Mr. Ilnicki did not intend to comply with the Ministry's request on a voluntary basis, the Director issued an Information Order to Mr. Ilnicki and the Third Party property owners under section 77 of the Act. The Order required these parties to retain a qualified consultant to conduct an inventory and characterize the wastes stored on the property, and to evaluate whether the wastes were being stored in a safe manner. Mr. Ilnicki appealed the Order and asked the Board to vacate or rescind the Order for the following reasons:

1. Materials, supplies and machinery found on the property were his personal belongings, owned by him for more than twenty years, and necessary for his business.
2. The construction supplies cannot be considered "waste" if still useable and in "virgin" condition.
3. The property was dry, secure, and safe with no public access, and with no public business conducted from the property.
4. The Officer gained access to the property without warrant or just cause.

The Board found that the purpose of an Information Order is, simply, to obtain information. Information may be needed to determine the nature of the substances and to determine whether further environmental protection, such as pollution prevention or pollution abatement orders, are required. Based on the language in section 77 of the Act, the Board found that an Information Order may be issued where there is a reasonable suspicion, or there is evidence of a reasonable risk, that an operation or activity is likely to cause, or has caused "pollution" as defined in the Act.

On the facts of this case, the Board found that there were reasonable grounds for the Order. The Officer found approximately 294 forty-five imperial gallon drums of materials during his inspection, many of which were flammable, corrosive, or unlabelled. Mr. Ilnicki had previously operated an unauthorized waste storage facility at another location and had been convicted in Provincial Court of two offences related to his operations at that facility. The Board found that the Ministry was justifiably concerned that some of the waste that had been stored at the other location may have been moved to this property.

The Board found that there was an ample basis for issuing the Information Order given the nature and quantity of materials found on the property during the inspection. Mr. Ilnicki's failure to provide proper documentation for the materials, and his history of serious contraventions related to the improper and unauthorized storage of hazardous wastes was further support for the Order.

The Board also considered the other issues raised by Mr. Ilnicki including his assertion that the dangerous goods stored on the property were not "waste". However, he provided no substantiation to support his assertion and the Board did not accept that some material, such as used oil filters, had any use and were not waste.

The Board upheld the Information Order and dismissed the appeal.

Health Act

There were no decisions by the Board during this reporting period.

Pesticide Control Act or Integrated Pest Management Act

There were no decisions by the Board during this reporting period.

Waste Management Act

Railway Owner Responsible for Cleaning Up Contaminated Site

1999-WAS-046(a) Canadian Pacific Railway Company v. Deputy Director of Waste Management (British Columbia Hydro and Power Authority, et al., Third Parties)
Decision Date: October 18, 2006
Panel: Alan Andison

This matter involved five properties in Vancouver, BC, that were contaminated with coal tar and related chemicals from a plant that manufactured roofing materials during the early 1900s. The properties are being remediated and several parties are involved in that process in accordance with a 1998 Remediation Order (as amended). In that order, the Deputy Director of Waste Management (the "Deputy Director") found that the five properties comprising the contaminated site were "among the most severely contaminated sites in British Columbia." Canadian Pacific Railway Company ("CP Rail") was not originally named to that order. However, in 1999, the Deputy Director decided that CP Rail should be named to the remediation order as it was a "past owner" of rail spurs (or sidings) located on a portion of the contaminated site. The Deputy Director concluded that coal tar spills would have occurred when coal

tar was unloaded from freight cars on its spur lines.

On November 16, 1999, the Deputy Director issued his decision which set out, among other things, his reasons for naming CP Rail as a responsible person. CP Rail appealed this decision, but asked the Board to decide, as a preliminary question of law, whether an owner of railway sidings that are situated on someone else's real property, can be required to help remediate a site that was contaminated, in part, by the transport of coal tar via the rail lines. Specifically, the question posed was, "does ownership of personal property (e.g., railway siding) that is situated on someone else's real property make the owner of the personal property an 'owner' of the real property under the *Waste Management Act*".

CP Rail argued that railway sidings placed on land were chattels, not fixtures. As a result, ownership of the sidings was not the same as ownership of real property. It argued that the word "owner" in the Act should be given its ordinary meaning and should only encompass persons who own real property at common law.

The Board found that an owner of personal property situated on someone else's real property, can be an "owner" of the real property for the purposes of Part 4 (the contaminated sites provisions) of the Act. The Board held that the definition of "owner" in the Act can be broken down into four components:

- Possession of real property
- Right of control of real property
- Occupation of real property
- Control of the use of real property

It concluded that a person need not meet all four components in order to be an "owner"; it is sufficient for a person to fall into any one of the categories.

The Board further held that the meaning of "owner" must be determined in a manner consistent with the purposes and objectives of the Act. To effect remediation of contaminated sites, the Act casts a broad net of liability to capture those who cause or contribute to pollution and those who may have benefited from the polluting activities of others on their property. Thus, there must also be some connection between a person's possession, right of control, occupation, or control of the use of real property and the pollution for the person to be named as an "owner" in a remediation order.

Accordingly, the Board found that the definition of "owner" in the Act is broader than the common law meaning of owner, and that legal ownership of real property is not required for a person to be an "owner" under the Act. Furthermore, it is not the status of railway sidings as chattels or fixtures that determines whether the owner of the sidings is an "owner" under the Act; rather, it is the nature and extent of that person's relationship with the real property.

Therefore, the Board concluded that "an owner of personal property situated on someone else's real property, can be an 'owner' of the real property for the limited purposes of Part 4 of the Act."

Water Act

The Board Considers a Person's Standing to Appeal Under the *Water Act*

2006-WAT-005(a) Mary Desmond on behalf of the Shawnigan Lake Watershed Watch Association v. Regional Water Manager (Teresa Elaine Erb, Licence Holder; Estate of Tom Bradbury and David Avren, Third Parties)
Decision Date: July 5, 2006
Panel: Alan Andison

Mary Desmond, on behalf of the Shawnigan Lake Watershed Watch Association (the "SLWWA"), appealed a decision of the Regional Water Manager (the "Regional Manager") to issue a conditional water licence to build a water ski pond near Shawnigan Lake. The Regional Manager challenged the standing of Ms. Desmond and the SLWWA to appeal this matter on the grounds that they do not fit within any of the categories of people who can file an appeal under section 92(1) of the *Water Act*. Specifically, they are not:

> (a) the person who is subject to the order,
> (b) an owner whose land is or is likely to be physically affected by the order, or
> (c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

In response, Ms. Desmond submitted that her mother qualified as an appellant under section 92(1) because she owns lakefront property on Shawnigan Lake and draws drinking water from the water systems supplied by the lake water. Ms. Desmond advised the Board that she acts as an agent for her mother.

The Board found that neither Ms. Desmond nor the SLWWA had standing to appeal in their own right under section 92(1). However, the Board found that Ms. Desmond's mother, as a riparian owner, had standing to appeal and that Ms. Desmond may act as agent for her mother in this matter. The Board amended Ms. Desmond's Notice of Appeal to indicate that she filed the appeal on behalf of her mother and denied the Regional Manager's application to dismiss the appeal.

Wildlife Act

Application to Use a Motor Vehicle in Order to Hunt Due to a Medical Condition

2005-WIL-028(a) Richard Webster v. Regional Wildlife Manager
Decision Date: April 13, 2006
Panel: Alan Andison

Under the *Motor Vehicle Prohibition Regulation* it is an offence for a person to use or operate a motor vehicle in certain specified areas and/or on specified roads within an area for the purpose of hunting. These areas or roads are closed to vehicles and are sometimes referred to as "vehicle access closures". However, regional managers are given the authority under the *Wildlife Act* to issue permits allowing the use a motor vehicle on these roads, despite the prohibition.

Richard Webster is deaf and suffers from an inflamed heel. He applied for one of these permits, asking to use his motor vehicle and his All Terrain Vehicle ("ATV") to drive on a certain road in the Okanagan Region that was closed to motor vehicles. In support of his application, Mr. Webster provided the Regional Manager with two hand-written notes from a medical doctor: one letter stated that Mr. Webster was deaf; the other stated

that he was suffering with an inflammation of the heel. Mr. Webster did not provide any information that would allow the Regional Manager to evaluate the extent of his disabilities, or to determine why using an ATV or motor vehicle was necessary for him to hunt safely. The Regional Manager was of the view that the doctor's letters alone were not sufficient to justify a permit that would allow him to drive on a closed road and he refused to issue a permit. Mr. Webster appealed this refusal to the Board.

The Board first noted that the hunting period for which Mr. Webster sought a permit had passed by the time all relevant documents were filed with the Board. Therefore, Mr. Webster's appeal was moot. The Board proceeded to consider the appeal, however, as it was of the view that its decision could be of some assistance to the parties should Mr. Webster choose to make a similar application in the future.

The Board noted that the particular area in which Mr. Webster wanted to hunt had been targeted for special protection by the government. The Board found that when an area is the subject of such special protection, it is the responsibility of the applicant to provide compelling evidence that the wildlife resource will not be jeopardized by the issuance of such a permit. In this case, the onus was on Mr. Webster to provide some detail, some rationale that would justify the issuance of a permit. Mr. Webster failed to do so, both when applying for the permit, and in the appeal process before the Board. Consequently, the Board found that Mr. Webster did not establish a sufficient basis for being granted a permit to use a vehicle for hunting in an area that is closed to vehicle traffic for the purpose of hunting.

The appeal was dismissed.

Restrictions on Free-Flying and Importing Non-Native Owls

2006-WIL-005(a) & 2006-WIL-016(a) Pacific Northwest Raptors Ltd. v. Regional Manager and Director

Decision Date: January 12, 2007

Panel: Alan Andison, Richard Cannings, David Ormerod

Pacific Northwest Raptors Ltd. ("PNWR") operates a commercial bird of prey and falconry centre in Duncan, BC. PNWR conducts bird control operations and falconry courses with a number of legally imported captive bred birds and holds a commercial falconry permit, which allows it to free-fly certain birds for educational, media-related, and nuisance wildlife control purposes. PNWR also holds education permits for its captive bred eagles, owls, and some disabled birds.

In 2006, two separate decisions were made regarding its owls which were appealed to the Board. First, the Regional Manager, Ministry of Environment (the "Ministry"), refused to allow PNWR to "free fly" a Spectacled Owl or any other non-native owls in PNWR's possession. He also refused to issue PNWR a permit for wildlife rehabilitation on the grounds that it was "against our policy to permit both commercial breeding and rehabilitation in the same facility or property" (Appeal No. 2006-WIL-005). In the second decision, the Director issued a permit that imposed restrictions on free flying and trafficking in certain eagles and owls in PNWR's possession (Appeal No. 2006-WIL-016). PNWR asked the Board to reverse the Regional Manager's decision, and to vary the Director's decision by removing the permit restrictions pertaining to its imported captive bred Eurasian Eagle Owl and imported captive bred Spectacled Owl. PNWR also requested that the

Board approve its application for a permit to rehabilitate injured birds at the same facility that it carries on a breeding program.

With respect to the Eurasian Eagle Owl, the Director required that it be caged unless sterilized, and that it could not be free flown. The Board found this requirement unreasonable. It concluded that the risk of this owl escaping was remote and that, subject to one condition, PNWR had taken adequate steps to mitigate any risk of escape, invasiveness, disease, injury or other harm to native wildlife or the public. However, the Board confirmed that, because the Eagle Owl is a large raptor that could prey upon native endangered birds such as the Spotted Owl, the Eagle Owl should not be flown within the known range of the Spotted Owl.

Regarding the Spectacled Owl, the Board noted that it was found to be free of West Nile virus when it was imported, and it poses no risk of hybridization with native species. The Board also found that PNWR had taken adequate steps to render negligible the risks associated with the bird's risk of escape and its potential invasiveness. The Board concluded that allowing PNWR to free fly the Spectacled Owl for educational displays, media-related work, falconry or raptor courses, and flying demonstrations was not contrary to the proper management of wildlife in BC.

Regarding PNWR's application to rehabilitate injured birds at the same facility that it carried on a breeding program, the Board found that the Regional Manager's refusal to grant the application was reasonable in the circumstances. PNWR has a captive raptor breeding program and the Board accepted that there is a valid policy basis for not allowing commercial breeding and rehabilitation to take place in the same facility or property.

Finally, the Board found that, except for the conditions pertaining to the Eurasian Eagle Owl and the Spectacled Owl, the permit conditions generally prohibiting PNWR from trafficking in non-class I and II raptors (i.e., non-traditional falconry birds such as eagles and owls), and imposing certain conditions on the free flying of specific birds, were a reasonable attempt by the Ministry to address PNWR's needs within the limits of the existing regulatory scheme.

The appeals were allowed, in part.

Allocation of Guided Angler Day Allocations on Classified Waters

2006-WIL-006(a); 007(a); 009(a); 010(a) Brian Larsen, Jason Smith, John Wallace and Stephen Kim Sedrovic v. Regional Manager (Gary Gow, Ned Cooper, Luigi Musso, Kelly Laatsch, Paul Samycia and Barry Rogers, Third Parties)
Decision Date: July 27, 2006
Panel: Cindy Derkaz

These four Appellants appealed the ten-year allocation of guided angler days issued by the Regional Manager to each of them on classified waters in the Kootenay Region. The Appellants argued that the East Kootenay Angling Management Plan (the "Plan"), upon which the allocations were based, was not based upon sound or appropriate scientific analysis, that angling guides did not have an opportunity to participate in the development and implementation of the Plan, that the guiding history of the Appellants had not been given proper consideration in the allocation process, that the allocations were unfair and unreasonable and that the allocations resulted in economic hardship. Each of the Appellants sought an increase in the number of guided angling days allocated to him.

The Third Parties in these appeals were other licensed angling guides in the Kootenay

Region, to whom the Regional Manager had offered an allocation of guided angler days in 2006, and who could have been affected by the Board's decision in the appeals.

The Board found that neither the Appellants nor the Third Parties had established that the implementation of the Plan was inappropriate, unfair or based on unsound scientific analyses. Moreover, the Plan contained both public and stakeholder input and the Appellants had not demonstrated that there was a lack of notice to the angling guide community in respect to the development of the Plan. The Board further found that the guided angler days had been allocated to each of the Appellants in accordance with the Plan and the Ministry of Environment's Provincial Guided Angler Day Allocation and Pricing Policy Working Document. The Board also found that the angler days had been allocated in accordance with Schedule A of the *Angling and Scientific Collection Regulation* and that neither the Regional Manager, nor the Board, had the authority to allocate guided angler days in excess of the maximum set out in Schedule A of the *Regulation*.

The appeals were dismissed.

Prohibiting the Capture of Gyrfalcons Within Certain Areas

2006-WIL-013(a) Ritchey Elliott v. Assistant Director, Fish and Wildlife Branch.
Decision Date: September 28, 2006
Panel: Alan Andison

Ritchey Elliott is a falconer and has been practicing falconry since the 1960's. He currently has 12 captive-raised raptorial birds, including a mated pair of gyrfalcons. He does not have any wild raptorial birds. Mr. Elliott uses raptorial birds for both recreational and commercial purposes.

In 2005, Mr. Elliott received a permit allowing him to capture one immature gyrfalcon anywhere in British Columbia except one wildlife management unit. In 2006, he applied for a permit to capture a number of different species of raptorial birds, including gyrfalcons. His stated purpose for the birds was "used for bird clearance". He was issued a permit by the Assistant Director of the Fish and Wildlife Branch, Ministry of the Environment, which allowed him to capture and transport a combination of up to two immature northern goshawks, cooper's hawks, gyrfalcons, or golden eagles. However, the permit also prohibited Mr. Elliott from capturing gyrfalcons in a number of wildlife management units. Mr. Elliott appealed the prohibitions with respect to the wildlife management units located within the Lower Mainland and on Vancouver Island (the "Closed Units").

On appeal, the Assistant Director submitted that his decision balanced the interests of falconers and the bird-viewing public. Due to the infrequency of sightings of gyrfalcons in the Closed Units, the Assistant Director argued that viewing opportunities should be preserved. The Assistant Director also expressed concerns about public relations because of an article published in the Vancouver Sun and referred to at least 20 letters from citizens of BC that were opposed to the capture of live raptors. The Assistant Director argued that the opportunity to view live gyrfalcon in densely populated regions was of higher benefit and use than the capture of the birds by falconers.

Mr. Elliott maintained that the capture of gyrfalcons in the Closed Units would not lead to public relations problems. He argued that the trapping of gyrfalcons had been allowed in these areas for the past three years, and the areas were still open for capture of other larger raptors.

Section 5 of the *Wildlife Act Permit Regulation* requires that the issuing of a permit not be "contrary to the proper management of wildlife resources." The question was whether the objective of preserving birds in the Closed Units to facilitate viewing by the public should have outweighed Mr. Elliott's interest in attempting to capture a gyrfalcon.

The Board accepted evidence that the likelihood of seeing a gyrfalcon in the wild is very low, and that any capture would reduce these chances. Because there are significantly more birdwatchers than falconers in the Closed Units, it was not unreasonable for the Assistant Director to be concerned about the potential for complaints from birdwatchers. The Assistant Director found a reasonable balance between the interests of the two groups by only closing those areas of British Columbia which have a dense human population.

In consideration of these factors, the Board found that the prohibitions were reasonable conditions of the permit and that there were no special circumstances warranting their removal.

The permit was confirmed and the appeal was dismissed.

Hunting Quota for Stone Sheep Adjusted by Consent Order

2006-WIL-015(a) Keith Connors v. Regional Manager
Decision Date: July 20, 2006
Panel: Alan Andison

Keith Connors, a guide outfitter in the Skeena Region, appealed his quota for Thinhorn Mountain Sheep Full Curl Rams (Stone Sheep) allocated in a guided outfitter licence issued by the Regional Manager. Mr. Connors asked for a 20% increase in his Stone Sheep quota for the period from April 1, 2006 to March 31, 2008, arguing that this increase was consistent with the Ministry's "Allocation of Wildlife Policy and the Sheep Harvest Guideline" which states that, when 65% of harvested rams in a guide-outfitter area exceed 8.5 years of age and there is a general open season for resident hunters, the guide outfitter is eligible for a 20% increase in the quota. He stated that the population of Stone Sheep in his guide territory either equals or exceeds the historic high, that all of the rams harvested in the previous four year period within his guiding area were over 8.5 years of age. He said that the decision to deny his request was based on the "Skeena Formula", but that he was not aware of the formula until the end of the 2004 hunting season. Although he was advised that the Regional Biologist would review the quota so he could fulfil the Skeena Formula, the Regional Biologist did not conduct this review and Mr. Connor's request for the review was denied.

Mr. Connors asked the Board to order his three year allocation of Stone Sheep to be increased to 12 rams per year.

Prior to a hearing, the parties came to an agreement that resolved the issues in the appeal. The Regional Manager determined that certain factors should be given more weight and other factors less weight. The result was that Mr. Connor met the criteria for an increase in his guideline under the Skeena Formula, and his quota was increased.

The parties set out the terms of the agreement in a Consent Order which was provided to the Board for its consideration and approval.

By consent of the parties, the Commission ordered that Schedule "B" of the licence, outlining the species guideline and the quota for Thinhorn Mountain Sheep Full Curl Rams, be deleted and replaced. Mr. Connors' quota was increased.

The appeal was allowed.

Summaries of Court Decisions Related to the Board

There were no court decisions issued on judicial reviews or appeals of Board decisions.

Summaries of Cabinet Decisions Related to the Board

There were no orders by Cabinet during this report period concerning decisions by the Board.

APPENDIX I

Legislation and Regulations

Reproduced below are the sections of the *Environmental Management Act* and the *Environmental Appeal Board Procedure Regulation* which establish the Board and set out its general powers and procedures.

Also included are the appeal provisions contained in each of the five statutes which provide for an appeal to the Board from certain decisions of government officials: the *Environmental Management Act*, the *Health Act*, the *Integrated Pest Management Act*, the *Water Act* and the *Wildlife Act*.

The legislation contained in this report is the legislation in effect at the end of the reporting period (March 31, 2007). Please note that legislation can change at any time. An updated version of the legislation may be obtained from Crown Publications.

Although not provided below, it should be noted that in addition to decisions of government officials, Part 3 of the *Environmental Management Act* gives district directors and officers appointed by the Greater Vancouver Regional District certain decision-making powers that can then be appealed to the Board under the appeal provisions in the *Environmental Management Act* referenced below. In addition, the *Oil and Gas Commission Act*, S.B.C. 1998, c. 39 (not reproduced) allows the Oil and Gas Commission to make certain decisions under the *Water Act* and the *Environmental Management Act*, and those decisions may be appealed in the usual way under the appeal provisions of the *Water Act* and *Environmental Management Act*, as set out below.

Environmental Management Act, SBC 2003, c. 53

Part 8

APPEALS

Division 1 – Environmental Appeal Board

Environmental Appeal Board

93 (1) The Environmental Appeal Board is continued to hear appeals that under the provisions of any enactment are to be heard by the appeal board.

(2) In relation to an appeal under another enactment, the appeal board has the powers given to it by that other enactment.

(3) The appeal board consists of the following individuals appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(4) The *Administrative Tribunals Appointment and Administration Act* applies to the appeal board.

(5 and 6) Repealed 2003-47-24.]

(7) The chair may organize the appeal board into panels, each comprised of one or more members.

(8) The members of the appeal board may sit

(a) as the appeal board, or

(b) as a panel of the appeal board.

(9) If members sit as a panel of the appeal board,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the appeal board, and

(c) an order, decision or action of the panel is an order, decision or action of the appeal board.

(10) The Lieutenant Governor in Council, by regulation, may establish the quorum of the appeal board or a panel.

(11) The appeal board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

Parties and witnesses

94 (1) In an appeal, the appeal board or panel

(a) may hear the evidence of any person, including a person the appeal board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(2) A person or body, including the appellant, that has full party status in an appeal may

(a) be represented by counsel,

(b) present evidence,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(3) A person who gives oral evidence may be questioned by the appeal board, a panel or the parties to the appeal.

Costs and security for costs

95 (1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(2) In addition to the powers referred to in section 93(2) but subject to the regulations, the appeal board may make orders as follows:

(a) requiring a party to pay all or part of the costs of another party in connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive, requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(3) An order under subsection (2) may include directions respecting the disposition of money deposited under subsection (1).

(4) If a person or body given full party status under subsection 94(2) is an agent or

representative of the government,

(a) an order under subsection (2) may not be made for or against the person or body, and

(b) an order under subsection (2)(a) may be made for or against the government.

(5) The costs payable by the government under an order under subsection (4)(b) must be paid out of the consolidated revenue fund.

Decision of appeal board

96 If the appeal board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of appeal board

97 The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the appeal board.

Appeal board power to enter property

98 The members of the appeal board have, for the purposes of an appeal, the right to enter any property except a private residence.

Division 2 — Appeals from Decisions under this Act

Definition of "decision"

99 For the purpose of this Division,

"decision" means

(a) making an order,

(b) imposing a requirement,

(c) exercising a power except a power of delegation,

(d) issuing, amending, renewing, suspending, refusing, cancelling or refusing to amend a permit, approval or operational certificate,

(e) including a requirement or a condition in an order, permit, approval or operational certificate,

(f) determining to impose an administrative penalty, and

(g) determining that the terms and conditions of an agreement under section 115(4) have not been performed.

Appeals to Environmental Appeal Board

100 (1) A person aggrieved by a decision of a director or a district director may appeal the decision to the appeal board in accordance with this Division.

(2) For certainty, a decision under this Act of the Lieutenant Governor in Council or the minister is not appealable to the appeal board.

Time limit for commencing appeal

101 The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.

Procedure on appeals

102 (1) An appeal under this Division

(a) must be commenced by notice of appeal in accordance with the prescribed practice, procedure and forms, and

(b) must be conducted in accordance with Division 1 of this Part and the regulations.

(2) The appeal board may conduct an appeal under this Division by way of a new hearing.

Powers of appeal board in deciding appeal

103 On an appeal under this Division, the appeal board may

(a) send the matter back to the person who made the decision, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances.

Appeal does not operate as stay

104 The commencement of an appeal under this Division does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Division 3 – Regulations in Relation to Appeal Board

Regulations in relation to the appeal board

105 (1) Without limiting section 138(1), the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing a tariff of fees to be paid with respect to a matter within the jurisdiction of the appeal board;

(b) prescribing practices, procedures and forms to be followed and used by the appeal board;

(c) establishing restrictions on the authority of the board under section 95(1) to (4) including, without limiting this,

(i) prescribing limits, rates and tariffs relating to amounts that may be required to be paid or deposited, and

(ii) prescribing what are to be considered costs to the government in relation to an appeal and how those are to be determined;

(d) respecting how notice of a decision under section 96 may be given.

Environmental Appeal Board Procedure Regulation, BC Reg. 1/82

Interpretation

1 In this regulation:

"Act" means the Environmental Management Act;

"board" means the Environmental Appeal Board established under the Act;

"chairman" means the chairman of the board;

"minister" means the minister responsible for administering the Act under which the appeal arises;

"objector" in relation to an appeal to the board means a person who, under an express provision in another enactment, had the status of an objector in the matter from which the appeal is taken.

Application

2 This regulation applies to all appeals to the board.

Appeal practice and procedure

3 (1) Every appeal to the board shall be taken within the time allowed by the enactment that authorizes the appeal.

(2) Unless otherwise directed under the enactment that authorizes the appeal, an appellant shall give notice of the appeal by mailing a notice of appeal by registered

mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested.

(4) The notice of appeal shall be signed by the appellant, or on his behalf by his counsel or agent, for each action, decision or order appealed against and the notice shall be accompanied by a fee of $25, payable to the minister charged with the administration of the *Financial Administration Act*.

(5) Where a notice of appeal does not conform to subsections (3) and (4), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(6) Where a notice of appeal is returned under subsection (5) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

Procedure following receipt of notice of appeal

4 (1) On receipt of a notice of appeal, or, in a case where a notice of appeal is returned under section 3(5), on receipt of an amended notice of appeal with the deficiencies corrected, the chairman shall immediately acknowledge receipt by mailing or otherwise delivering an acknowledgement of receipt together with a copy of the notice of appeal or of the amended notice of appeal, as the case may be, to the appellant, the minister's office, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(2) The chairman shall within 60 days of receipt of the notice of appeal or of the amended notice of appeal, as the case may be, determine whether the appeal is to be decided by members of the board sitting as a board or by members of the board sitting as a panel of the board and the chairman shall determine whether the board or the panel, as the case may be, will decide the appeal on the basis of a full hearing or from written submissions.

(3) Where the chairman determines that the appeal is to be decided by a panel of the board, he shall, within the time limited in subsection (2), designate the panel members and,

(a) if he is on the panel, he shall be its chairman,

(b) if he is not on the panel but a vice chairman of the board is, the vice chairman shall be its chairman, or

(c) if neither the chairman nor a vice chairman of the board is on the panel, the chairman shall designate

one of the panel members to be the panel chairman.

(4) Within the time limited in subsection (2) the chairman shall, where he has determined that a full hearing shall be held, set the date, time and location of the hearing of the appeal and he shall notify the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the *Health Act*, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(5) Repealed. [B.C. Reg. 118/87, s.2.]

Quorum

5 (1) Where the members of the board sit as a board, 3 members, one of whom must be the chairman or vice chairman, constitute a quorum.

(2) Where members of the board sit as a panel of one, 3 or 5 members, then the panel chairman constitutes a quorum for the panel of one, the panel chairman plus one other member constitutes the quorum for a panel of 3 and the panel chairman plus 2 other members constitutes the quorum for a panel of 5.

Order or decision of the board or a panel

6 Where the board or a panel makes an order or decision with respect to an appeal, written reasons shall be given for the order or decision and the chairman shall, as soon as practical, send a copy of the order or decision accompanied by the written reasons to the minister and the parties.

Written briefs

7 Where the chairman has decided that a full hearing shall be held, the chairman in an appeal before the board, or the panel chairman in an appeal before a panel, may require the parties to submit written briefs in addition to giving oral evidence.

Public hearings

8 Hearings before the board or a panel of the board shall be open to the public.

Recording the proceedings

9 (1) Where a full hearing is held, the proceedings before the board or a panel of the board shall be taken using shorthand or a recorder, by a stenographer appointed by the chairman, for a hearing before the board, or by the panel chairman, for a hearing before the panel.

(2) Before acting, a stenographer who takes the proceedings before the board or a panel shall make oath that he shall truly and faithfully report the evidence.

(3) Where proceedings are taken as provided in this section by a stenographer so sworn, then it is not necessary that the evidence be read over to, or be signed by, the witness, but it is sufficient that the transcript of the proceedings be

(a) signed by the chairman or a member of the board, in the case of a hearing before the board, or by the panel chairman or a member of the panel, in the case of a hearing before the panel, and

(b) be accompanied by an affidavit of the stenographer that the transcript is a true report of the evidence.

Transcripts

10 On application to the chairman or panel chairman, as the case may be, a transcript of the proceedings, if any, before the board or the panel of the board shall be prepared at the cost of the person requesting it or, where there is more than one applicant for the transcript, by all of the applicants on a pro rata basis.

Representation before the board

11 Parties appearing before the board or a panel of the board may represent themselves personally or be represented by counsel or agent.

Health Act, RSBC 1996, c. 179

Power to make regulations

8 (2) In addition to the matters set out in subsection (1), the Lieutenant Governor in Council may make regulations with respect to the following matters:

...

(m) the inspection, regulation and control, for the purposes of health protection provided in this Act, of

...

(ii) the location, design, installation, construction, operation and maintenance of

(A) septic tanks,

...

(C) sewage disposal systems,

...

and requiring a permit for them and requiring compliance with the conditions of the permit and authorizing inspections for that purpose;

...

(4) If a person is aggrieved by the issue or the refusal of a permit for a sewage disposal system under a regulation made under subsection (2)(m), the person may appeal that ruling to the Environmental Appeal Board continued under section 93 of the *Environmental Management Act* within 30 days of the ruling.

(5) On hearing an appeal under subsection (4), the Environmental Appeal Board may confirm, vary or rescind the ruling under appeal.

Integrated Pest Management Act, SBC 2003, c. 58

Appeals to Environmental Appeal Board

14 (1) For the purposes of this section, **"decision"** means any of the following:

(a) making an order, other than an order under section 8;

(b) specifying terms and conditions, except terms and conditions prescribed by the administrator, in a licence, certificate or permit;

(c) amending or refusing to issue, amend or renew a licence, certificate or permit;

(d) revoking or suspending a licence, certificate, permit or confirmation;

(e) restricting the eligibility of a holder of a licence, certificate, permit or pest management plan to apply for another licence, certificate or permit or to receive confirmation;

(f) determining to impose an administrative penalty;

(g) determining that the terms and conditions of an agreement under section 23(4) have not been performed.

(2) A declaration, suspension or restriction under section 2 is not subject to appeal under this section.

(3) A person may appeal a decision under this Act to the appeal board.

(4) The time limit for commencing an appeal of a decision is 30 days after the date the decision being appealed is made.

(5) An appeal must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environmental Management Act*.

(6) Subject to this Act, an appeal must be conducted in accordance with Division 1 of Part 8 of the *Environmental Management Act* and the regulations under that Part.

(7) The appeal board may conduct an appeal by way of a new hearing.

(8) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(9) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Water Act, *RSBC 1996, c. 483*

Appeals to Environmental Appeal Board

92 (1) Subject to subsections (2) and (3), an order of the comptroller, the regional water manager or an engineer may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) an owner whose land is or is likely to be physically affected by the order, or

(c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

(1.1) Despite subsection (1), a licensee may not appeal an order of the comptroller or a regional water manager to cancel in whole or in part a licence and all rights under it under section 23(2)(c) or (d).

(2) An order of the comptroller, the regional water manager or an engineer under Part 5 or 6 in relation to a well, works related to a well, ground water or an aquifer may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) the well owner, or

(c) the owner of the land on which the well is located.

(3) An order of the comptroller, the regional water manager or an engineer under section 81 may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) the well owner,

(c) the owner of the land on which the well is located, or

(d) a person in a class prescribed in respect of the water management plan or drinking water protection plan for the applicable area.

(4) The time limit for commencing an appeal is 30 days after notice of the order being appealed is given

(a) to the person subject to the order, or

(b) in accordance with the regulations.

(5) For the purposes of an appeal, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(6) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environmental Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environmental Management Act* and the regulations under that Act.

(7) The appeal board may conduct an appeal by way of a new hearing.

(8) On an appeal, the appeal board may

(a) send the matter back to the comptroller, regional water manager or engineer, with directions,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is appealed could have made and that the board considers appropriate in the circumstances.

(9) An appeal does not act as a stay or suspend the operation of the order being appealed unless the appeal board orders otherwise.

Wildlife Act, *RSBC 1996, c. 488*

Reasons for and notice of decisions

101 (1) The regional manager or the director, as applicable, must give written reasons for a decision that affects

(a) a licence, permit, registration of a trapline or guide outfitter's certificate held by a person, or

(b) an application by a person for anything referred to in paragraph (a).

(2) Notice of a decision referred to in subsection (1) must be given to the affected person.

(3) Notice required by subsection (2) may be by registered mail sent to the last known address of the person, in which case, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

Appeals to Environmental Appeal Board

101.1 (1) The affected person referred to in section 101(2) may appeal the decision to the Environmental Appeal Board established under the *Environmental Management Act*.

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101(2), or

(b) in accordance with the regulations.

(3) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environmental Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environmental Management Act* and the regulations under that Act.

(4) The appeal board may conduct an appeal by way of a new hearing.

(5) On an appeal, the appeal board may

(a) send the matter back to the regional manager or director, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(6) An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

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